

**IN THE UNITED STATES BANKRUPTCY COURT
FOR THE SOUTHERN DISTRICT OF ILLINOIS**

IN RE:

In Proceedings
Under Chapter 7

LISA DAWN FOWLER

Case No. 98-40734

Debtor(s).

OPINION

On March 14, 1996, a judgment for dissolution of marriage was entered in Franklin County, Illinois, dissolving the marriage of Lisa Dawn Fowler ("debtor") and Wayne Fowler. The judgment provided, in pertinent part, as follows:

As consideration for Lisa's release of her interest in the marital real estate, Wayne shall pay to Lisa the sum of Forty Thousand Dollars (\$40,000.00), payable as follows:

(i) The sum of \$25,000.00 on or before March 30, 1996.

(ii) \$5,000.00 per year payable for three years, payable on March 30, 1997, March 30, 1998, and March 30, 1999.

All of the payments, with the exception of the payment due on March 30, 1999, were received (and apparently spent) by debtor prior to the time that she filed her chapter 7 bankruptcy petition on April 29, 1998.

In her amended schedule of exemptions, debtor claims as exempt the \$5,000.00 payment due in March 1999. As the basis for her exemption, debtor cites 735 ILCS §§ 5/12-901 and 5/12-906. Those sections provide, in part, as follows:

§ 12-901. Amount. Every individual is entitled to an estate of homestead to the extent in value of \$7,500 . . . and such homestead, and all right and title therein, is exempt from attachment, judgment, levy or judgment sale for the payment of his or her debts. . . .

§ 12-906. Proceeds of sale. When a homestead is conveyed by the owner thereof . . . the proceeds thereof, to the extent of the amount of \$7,500, shall be exempt from judgment or other process, for one year after the receipt thereof, by the person entitled to the exemption, and if reinvested in a homestead the same shall be entitled to the same exemption as the original homestead.

735 ILCS §§ 5/12-901 and 5/12-906. According to debtor, the \$5,000.00 payment due on March 30, 1999 represents the proceeds of the sale of her homestead to her ex-husband and under section 5/12906, is exempt for one year after her receipt of those proceeds.

The trustee filed an objection to this exemption, arguing that because debtor has already received \$35,000.00 of her total interest in the marital residence, it would be unfair to allow her to exempt the remaining payment. In other words, according to the trustee, debtor has already received, and used, her homestead exemption and is therefore not entitled to an additional \$5,000.00.

The Court agrees. Although exemptions are determined as of the filing date, the Court cannot ignore the fact that debtor has already received \$35,000.00 in proceeds from the "sale" of her interest in the marital homestead. Under Illinois law, she is entitled to exempt only \$7500.00, and accordingly, the trustee's objection must be sustained.¹ See In re Lowder, 188 B.R. 573, 575 (Bankr. C.D. Ill. 1995) (where debtor had already spent \$14,000.00 prior to bankruptcy, homestead exemption, if applicable, had been "used up," and debtor was not entitled to exempt another \$7500.00)

For these reasons, the trustee's objection to exemption is SUSTAINED.

SEE WRITTEN ORDER.

ENTERED: October 28, 1998

/s/ KENNETH J. MEYERS
UNITED STATES BANKRUPTCY JUDGE

¹In her brief, the Trustee did not pursue the argument that the one year period set forth in § 5/12-906 had expired. In light of the Court's decision, it is unnecessary to address that specific issue.